

STATE OF MICHIGAN

COURT OF APPEALS

CITY of ALPENA, a
Michigan Municipal Corporation,

Plaintiff- Appellee,

v

TOM SHAW, INC., a Michigan
Corporation, and TOM SHAW,
Individually, Jointly and Severally,

Defendant-Appellant.

UNPUBLISHED
September 17, 1996

No. 176267
LC No. 92-262-CZ

Before: Michael J. Kelly, P.J., and Hoekstra and E.A. Quinnell,* JJ.

PER CURIAM.

Defendant appeals of right from a May 25, 1994, order of the Alpena Circuit Court assessing costs after finding defendant in default for failure to attend a previous hearing. We reverse.

Defendant was not given sufficient notice of the May 24, 1994, hearing date which the court scheduled sua sponte. We vacate the entry of default and set aside the judgment entered on May 25, 1994. The record reflects no written notice given to defendant of the May 24, 1994, "further hearing" which had not been scheduled during the previous hearing on May 17 or in the order which resulted from that hearing. Although the record reflects that the trial court instructed the sheriff to inform the defendant of the hearing, there is no conclusive indication that he received such oral notice and even if he did, there is no indication of when it occurred. MCR 2 119(C) contemplates written notice. Notice can be mailed or delivered at least 7 days before the hearing to the appropriate person and any variance in time limits set by the court must be indicated thereon. We remand for proceedings conforming with due process requirements. *Building Owners and Managers Association of Metropolitan Detroit v Public Service Commission*, 131 Mich App 504, 512; 346 NW2d 581 (1984).

* Circuit judge, sitting on the Court of Appeals by assignment.

Reversed. Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ Joel P. Hoekstra

/s/ Edward A. Quinnell